

February 23, 2005

Sara Hernandez  
Private Rental Housing  
Miami-Dade Housing Agency  
2153 Coral Way  
Miami, Florida 33145

**RE: REQUEST FOR ADVISORY OPINION 05-17**

Dear Ms. Hernandez:

The Commission on Ethics and Public Trust considered your request for an advisory opinion at its meeting on February 22, 2005 and rendered its opinion based on the facts stated in your letter.

You requested an opinion regarding your ability to develop housing and secure mortgages through a program operated by the Miami-Dade Housing Agency.

In your letter, you advised the Commission that you recently purchased county-owned property through a public auction. GSA sells the lots on an as-is basis. The lots purchased by you are subject to liens that exceed the market value of the property. Therefore, you have been unable to sell the lots to a third party developer. The County will waive the liens if the owner participates in an affordable housing program.

The Miami-Dade Housing Agency operates two affordable-housing programs through the Development and Loan Administration Division. In one program, MDHA provides construction financing to a developer through a Request for Application (RFA) process. In the second program, the County provides mortgages to homebuyers who purchase homes in the development. You are seeking to participate in the mortgage program.

The Commission found that you may not participate in the mortgage program operated by the Miami-Dade Housing Agency. The Conflict of Interest and Code of Ethics ordinance prohibits an employee from doing any business with their own department. Section 2-11.1 (c) provides that "no person ..... shall enter into any contract or transact any business through a firm, corporation, partnership or business entity in which he or a member of his immediate family has a controlling financial interest, direct or indirect, with Miami-Dade County or any person or agency acting for Miami-Dade County and any such contract, engagement or business engagement entered into in violation of this subsection shall render the transaction voidable."

Section 2-11.1 (c) further provides that "(n)otwithstanding any provision to the contrary herein, subsection (c) and (d) shall not be construed to prevent any employee....from entering into any contract, individually or through a firm, corporation, partnership or business entity in which the employee or any member of his or her immediate family has a controlling financial interest, with Miami-Dade County or any person or agency acting for Miami-Dade County as long as 1) entering into the contract would not interfere with the full and faithful discharge by the employee of his or her duties to the County, 2) the employee has not participated in determining the subject contract awards or awarding the contract , and 3) the employee's job responsibilities and job description will not require him or her to be involved with the contract in any way, including but not limited to its enforcement, oversight, administration, amendment, extension, termination or forbearance.

Since you work for the department that will oversee and administer the contract for

mortgage financing, you are prohibited from receiving mortgage funding from the Miami-Dade Housing Agency. Further, you are prohibited from entering into a contract with a developer who receives mortgage funding as long as you retain a controlling financial interest<sup>1</sup> in the corporation.

Therefore, the Conflict of Interest and Code of Ethics ordinance prohibits you from entering into a contract with the Miami-Dade Housing Agency to receive mortgage financing for an affordable housing development. You are also prohibited from entering into any joint agreement with a developer who receives mortgage funding if you retain a controlling financial interest in the corporation.

This opinion construes the Miami-Dade Conflict of Interest and Code of Ethics ordinance only and is not applicable to any conflict under state law. Please contact the State of Florida Commission on Ethics if you have any questions regarding possible conflicts under state law.

If you have any questions regarding this opinion, please call the undersigned at (305) 579-2594 or Ardyth Walker, Staff General Counsel at (305) 350-0616.

Sincerely Yours,

ROBERT MEYERS  
Executive Director

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<sup>1</sup> A controlling financial interest is 10% or more.